IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3976 of 2006
Date of decision 15 .5.2007

Chajju Ram Garg .. petitioner

Versus

Punjab State Industries and Export Corporation Ltd. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.RN Raina, Advocate for the petitioner
Mr. B.L.Gupta, Advocate for the respondent.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 3.2.2006 (Annexure P.10) rejecting the claim of the petitioner for release of retiral benefits such as leave encashment amounting to Rs.2,25,000/- and ex-gratia etc. A further prayer has been made for issuance of direction to the respondent corporation to pay interest @ 18 percent p.a. (compounded) from the date benefits were payable till the date of actual payment.

The facts are not in dispute. The petitioner who was working as Accounts Officer with the respondent-corporation attained the age of superannuation and retired on 28.2.2003. There was no charge sheet pending against the petitioner on 9.3.2006 when the instant petition was filed. It is appropriate to mention that a charge sheet was issued against the petitioner on 23.12.1998 (Annexure P.3). The charges levelled against the petitioner could not be proved in a departmental enquiry which were accordingly dropped on 6.7.2001 (Annexure P.5). Another charge sheet was issued to the petitioner on 27.2.2003 (Annexure P.6) a day before his retirement. In the office order dated 18.2.2003 (Annexure P.7) passed by

the respondent it was mentioned that the retiral benefits of the petitioner may be withheld till the finalisation of the disciplinary proceedings. However, charge sheet dated 27.2.2003 was dropped by the Corporation on 21.6.2005 (Annexure P.8). The petitioner earlier filed CWP No. 19070 of 2005 which was disposed of on 8.12.2005 with a direction to the respondents to decide the legal notice issued by the petitioner through his counsel by passing a speaking order. The petitioner has also moved the Assistant Labour Commissioner cum Controlling Authority under the Payment of Gratuity Act, 1972. The claim of the petitioner was allowed alongwith interest @ 9 percent p.a. vide order dated 17.4.2005, from the date of application till payment. For execution of the order proceedings are pending in the Court of Assistant Labour Commissioner cum Controlling Authority, Union Territory, Chandigarh.

In compliance of the directions issued by this Court in CWP No. 19070 of 2005, the Corporation passed the impugned order dated 3.2.2006 (Annexure P.10) rejecting the claim of the petitioner for release of his retiral benefits such as leave encashment, ex gratia amount on the false ground of pendency of disciplinary proceedings alleging that the recovery of financial loss in the fraud case amounting to Rs. 6.24 lacs were pending. A reference was also made to a paragraph of the audit appearing in the report of the Comptroller and Auditor General of India alleging that the matter is pending in the Vidhan Sabha Committee on Public Undertaking in which the petitioner is involved. Both the grounds taken in the impugned order are unsustainable in the eyes of law because in the disciplinary proceedings relating to the charge of fraud involving Rs. 6.24 lacs , the petitioner was exonerated vide order dated 6.7.2001 (Annexure P.5). Even

the recovery suit filed by the Corporation against the petitioner was dismissed. The excuse of audit paras in the report of the Comptroller and Auditor General of India having been kept pending is also not sustainable because the name of the petitioner does not appear in any part of the audit report. Moreover, vide office order dated 2.4.2003 the Government of Punjab, Department of Industries and Commerce has informed the Corporation that audit paras of the report were reviewed and it was decided not to pursue the matter any further (Annexure P.11). Even case FIR No. 355 dated 11.4.1980 was registered in which the petitioner has not been named. The retiral benefits have been released to those persons who were facing the criminal trial. It is further appropriate to mention that even in the written statement a false stand has been taken by the respondents as is evident from the perusal of paras 1,2,3 and 4 because at the hearing Mr. B.L.Gupta, learned counsel for the respondent, has to accept that no case infact was pending on the date of filing of the written statement dated 10/11.5.2007.

After hearing the learned counsel and perusing the paper book alongwith annexures, we are of the considered view that the respondent has treated the petitioner unfairly by forcing him to move this Court twice by filing CWP No.19070 of 2005 decided on 8.12.2005 and the instant writ petition. Once no disciplinary proceedings were pending against the petitioner then there was no reason for the respondent to file a written statement representing that disciplinary proceedings have been pending. In such a situation, the retiral benefits of the petitioner could not be withheld. The petitioner has rendered 27 years of long service to the respondent and he has been treated with malice by the respondents for the reasons best

known to them. There is no valid reason to withhold the retiral benefits like leave encashment and ex-gratia etc. of the petitioner. All the excuses put forward in the impugned order dated 3.2.2006 (Annexure P.10) are false to the knowledge of the respondents. Therefore, while allowing the writ petition, we quash the order dated 3.2.2006 (Annexure P.10) and direct the respondents to release the benefit of leave encashment alongwith ex-gratia etc.. The petitioner shall be entitled to interest @ 12 percent p.a. as per law laid down by a Full Bench of this Court in the case of R.S.Randhawa v. State of Punjab 1997(3) RSJ 318. We express our displeasure regarding the conduct of the respondent in filing the written statement and accordingly saddle the respondent with costs of Rs.20,000/- which shall be initially paid to the petitioner by the respondent- corporation within a period of two months alongwith other retiral benefits as per directions . The respondent shall then undertake a fact finding enquiry pinning the responsibility of filing false written statement before this Court which has been duly signed by Shri R.L.Goyal, Senior Law Officer, PSIEC, Ltd., Chandigarh. The whole process for holding enquiry and pinning the responsibility should be completed within a period of three months from the date of receipt of certified copy of this Court by the Corporation. The recovery of costs of Rs. 20,000/- shall be effected from the defaulting Officer/official. A report in this regard be sent to this Court failing which the case be listed for hearing after the expiry of the afore-mentioned period.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

15.5.2007
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